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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

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SUP. Ct. OF THE
DISTRICT OF COLUMBIA

APR 5 1982

OLIVER A. COYAN, JR.,
Petitioner,

FILED

v. : Docket No. 3083.
DISTRICT OF COLUMBIA :
DEPARTMENT OF FINANCE :
AND REVENUE, :
Respondent. :
S/

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is an appeal from an assessment of District of Columbia Deed Recordation Tax against petitioner in the amount of \$12,763.09 on December 26, 1979, for the recordation of a deed to the property known as Lot 899 in Square 2794, together with improvements thereon known as 1336 Missouri Avenue, N.W., in the District of Columbia (the property).

FINDINGS OF FACT

1. The tax in question is a Deed Recordation Tax concerning Lot 899 in Square 2794, improved by premises known as 1336 Missouri Avenue, N.W. (the property) in the amount of \$12,763.09.

2. The tax was paid by Petitioner Oliver A. Coyman, Jr. on December 26, 1979, at the time a deed to the property was recorded in the Office of the Recorder of Deeds for the District of Columbia. Petitioner was listed as the grantee in that deed and the Lynwood Limited Partnership was listed as the grantor.

Since the District of Columbia is the ultimate set jurisdiction respondent in this proceeding, it will be equated with the named respondent in this case, except for purposes of the caption. See D.C. Code 1973, §1-102 (1981, §1-102).

3. Petitioner's claim for refund was denied on April 10, 1981.

4. The property was conveyed to the Lynwood Limited Partnership, a District of Columbia limited partnership (the partnership), by a Deed dated December 2, 1974 and recorded on December 20, 1974 as Instrument 28581 with the Recorder of Deeds of the District of Columbia.

5. The partnership was formed in 1972 by petitioner and Daniel J. Veal, Jr., who were both general and limited partners, and they were tenants by the entireties with their wives, Ramona Cowan and Sylvia J. Veal, who were limited partners.

6. Sylvia J. Veal died prior to September 1978.

7. On June 23, 1978, Daniel J. Veal transferred the legal title to his interest in the partnership to Nelson C. Cohen as Trustee and Nominee for Oliver A. Cowan, Jr.

8. On October 24, 1979, Ramona Cowan transferred to Oliver A. Cowan, Jr., all of her interest in and to the property as well as all of her interest in the partnership.

9. As of December 26, 1979, Oliver A. Cowan, Jr. was the sole remaining partner of the partnership and the property was the only asset of that partnership.

COMPLAINT OF TAX

The District of Columbia properly imposed its deed recording tax on petitioner's recordation of the deed which transferred legal title to the property from the partnership to him.

In Columbia Realty Venture v. Dist. of Columbia, D.C.App., 433 A.2d 1075 (1981), the District of Columbia Court of Appeals affirmed this Court's decision that if a deed operates to transfer title from one legal entity to another, the recordation of that deed is subject to tax. The holding in Columbia Realty Venture controls the circumstances presented by this proceeding.

In this case, as in Columbia Realty Venture, the partnership,

as a limited partnership, may hold and convey property as an entity separate and distinct from the individuals who hold interests in the limited partnership as either general or limited partners. D.C. Code 1973, 106A-507, -403B(b)(1); G. BROWNE, OH PARTNERSHIP § 22(6)(c), 42(3) (1980); REED, OH PARTNERSHIPS, § 200..., C.J.S. 25.1 (2d ed. 1980). The deeds executed by the Venture record a passing of title to the limited partnership, not to the general and limited partners. [T.D. cc-1073.]

The District correctly imposed the deed recordation tax on the transfer of legal title to the property from the partnership to Oliver A. Cowan, Jr.:

In re Estate of Carl J. H. Appel, et al. 1070-1080, Supreme Court Case No. 1070-1080 v. Commissioner of Columbia, 100 U.S.L.W. p.v.c. L-13, 605 F.2d 109 (1980). Although a deed recordation tax was imposed when a liquidating corporation conveyed real property to stockholders for its stockholders and "no price or amount" was paid or required to be paid" for the deed. This Court sees no more reason for exempting a transfer of real estate from a dissolved partnership to the sole remaining partner, without consideration, than for exempting such a transfer from a liquidating corporation to stockholders for its stockholders. Both the sole remaining partner and the stockholders of the liquidating corporation had an interest in the assets of the partnership and of the corporation, respectively.

Since the [deed reflects] a conveyance of property from one entity to another [it] cannot be said to "confer, correct, modify or supplement a deed previously recorded" as required by the statutory exemption.^{3/} This transaction involved more than a simple adjustment in an earlier recorded deed. There was a complete change of the lawful owner of the real property, the exact event for which the tax is imposed. [Id.]

* * *

On the other hand, we can also conceive of a setting where an individual transfers property to a corporation of which he is the sole shareholder. In that case, as in this one, deeds representing an exchange of property between two legal entities would be subject to the recodification tax although the percentages in the two entities are similar or even identical. [Id. at 1080, footnote omitted]

* * *

Simply because the enterprise conveying the property . . . dissolved, and the persons concerned, and the participants in their business enterprises were similar, the original exchange is not deemed into something other than a property transfer between two separate business entities. The deeds reflect more than that the statutory exemption contemplates: The deeds do not merely "confer, correct, modify or supplement" deeds previously recorded; they reflect that the property is now held by a new entity. That is exactly the type of property transaction to which the recodification tax is intended to apply. Consequently, we affirm the decision of the trial court rejecting appellant's petition for a refund of the tax. [Id.]

Since the partnership was formed in 1972, the

^{3/} See, e.g., 1973-2 U.S. L.W. (CCH) 26,255-722(6), which exempts from the tax "[d]eeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded" and which provides further upon herein. Plaintiff's Supplemental Memorandum of Points and Authorities in Support of Motion for Summary Judgment of Charles A. Cowan, Jr. at 6-8, which alleges that the recodification of the subject deed "merely confirmed a pre-existing reality" [italics] was an sole individual or entity with an interest in the premises at 1336 Missouri Ave., N.W."

provisions of the Uniform Partnership Act, which was enacted in the District of Columbia in 1962, should be applied to determine the rules for distribution of real property upon dissolution of a partnership. District of Columbia v. Biggs Nat. Bank of Wash., D.C., D.C.App., 335 A.2d 238, 243 (1975).

Petitioner's interest in the partnership was personal property. D.C. Code 1981, §41-125, Columbia Realty Venture, supra, at 1077.

The subject property is partnership property, since it was acquired by the partnership on December 2, 1974, D.C. Code 1981, §41-107. Partnerships continue to exist after dissolution, until the winding up of partnership affairs, D.C. Code 1981, §341-128 and 41-129. This is, of course, necessary to protect creditors of the partnership. Even property held in joint tenancy by partners is subject to the rights of creditors of the partnership. Biggs, supra, at 243-244. The sole task concerning the winding up of the partnership was the distribution of that partnership's only asset, the property. The real property of a partnership is properly transferred by "a conveyance executed by a partner, in his own name", D.C. Code 1981, §41-109, if the property is titled in the name of the partnership. This is exactly the manner in which the subject deed was executed. Such a conveyance comes within the meaning of a "deed" as defined in D.C. Code 1981, §45-921(5) as follows:

The word "deed" means any document, instrument, or writing (other than a will and other than a lease), regardless of where made, executed, or delivered thereby any real property in the District of Columbia, or any interest therein, is conveyed, vested, granted, bargained, sold, transferred, or assigned.

What was said of the taxpayer by the Court in Columbia Realty Venture, supra, at 8078, is equally applicable to petitioner herein:

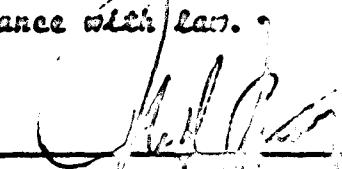
The trustees and shareholders of the Trust and the limited and general partners of the Venture elected to deal with the property involved in this case through unique and specific business enterprises rather than as individuals. The majority transactions entered in by the Trust and the Venture have been and will be made by, and in the name of, these business entities. These business arrangements generate various advantages for the individual participants, including limited liability personal liability. See, e.g., FEDERAL, 10A CYCLOPEDIA OF CORPORATE LAW, section 10979; CRANE & BROOKINS, ON PARTNERSHIP [1966]. Having conducted their business affairs in such a manner, the participants must operate independently and not as joint venturers as individuals which would better suit their interests in a particular setting. It would be inappropriate for this court now to ignore the two business organizations and examine the names of individual participants in each of the business entities for purposes of determining the nature of the transaction in this case.

Similarly, the existence of the partnership and the fact that the subject property was titled in the name of the partnership cannot be ignored in order to treat the partnership property as if it were titled in petitioner's name as an individual simply because "that would better suit [his] interests" in a setting which otherwise calls for the imposition of the deed recordation tax.

Petitioner's challenge to the District's imposition of the tax is based on the contentions that title to the property passed to petitioner, as the last remaining partner, "as a matter of law", and that the deed recorded December 26, 1970, merely confirmed the passing of this title from the dissolved partnership to petitioner. Petitioner alleges in particular (1) that "no partnership existed at [the time the deed was] recorded" and (2) that "the document in question . . . merely reflected a change in nomenclature and accordingly did not constitute a 'deed' . . ." Petitioner's Memorandum of Points and Authorities at 2 and 5.

This Court is unaware of any statutory provision or case law which suggests, much less establishes, that a sole remaining partner receives title to partnership real estate "by operation of law" upon dissolution of that partnership.

The partnership held title to the property and transferred it by deed to petitioner, a separate legal entity. This is exactly the transaction which is subject to the deed recordation tax. This is exactly the type of property transaction to which the tax is intended to apply, and, therefore, the Department of Finance and Revenue's assessment of deed recordation tax against petitioner was proper and in accordance with law.



JOHN D. FAUCHIEROY

April 2, 1972

Orville W. Rogers cot
Assistant Corporation Counsel
Corporation Counsel, D.C.

James E. Tamm cot
Deputy Corporation Counsel, D.C.

Richard L. Anglin
Assistant Corporation Counsel, D.C.

Richard M. Amato
Assistant Corporation Counsel, D.C.

Attorneys for Respondent
Room 206, Dist. Bldg.
1421 G St. S.E., N.W.
Washington, D.C. 20004
(202) 727-6255

Ogilvie W. Rogers ccst
SUBSTITUTE ATTORNEY
Corporation Counsel, D.C.

James E. Tamm ccst
JAMES E. Tamm
Deputy Corporation Counsel, D.C.

Patrick L. Agoglia
PATRICK L. AGOGGLIA
Assistant Corporation Counsel, D.C.

Richard H. Amato
RICHARD H. AMATO
Assistant Corporation Counsel, D.C.

Attorneys for Respondent
Room 306, Dist. Bldg.
1421 G E Sts., N.W.
Washington, D.C. 20004
(202) 727-6255

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
Proposed Findings of Fact and Conclusions of Law, together
with a proposed Order was mailed, postage prepaid, this
17th day of March, 1982, to Jeffrey H. Frost, Esq.,
and Barbara J. Finer, Esq., Attorneys for Petitioner,
Suite 1400, 5454 Wisconsin Avenue, Chevy Chase, Maryland
20015.

Ronald A. Donato
Assistant Corporation Counsel, D.C.

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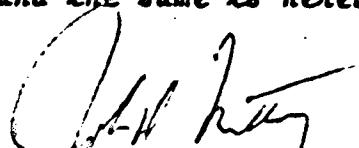
ORDER

Upon consideration of the petition filed herein, the motions of petitioner and of respondent District of Columbia for summary judgment, the affidavit and other exhibits filed herein, the memoranda of points and authorities filed in support thereof, and of the parties' respective statements of material facts as which they contend there is no genuine issue, it is, this 27 day of April, 1982,

ORDERED that the motion of respondent District of Columbia for summary judgment be, and the same is hereby, granted; and it is,

FURTHER ORDERED that judgment is granted in favor of respondent District of Columbia; and, it is,

FURTHER ORDERED that the motion of petitioner for summary judgment be, and the same is hereby, denied with prejudice.



 JUDGE
 JOHN D. FAUNTLEROY

Date: _____

Copies to:

Jeffrey H. Frost, Esq.
5454 Wisconsin Ave.
Suite 1400
Chevy Chase, MD 20015

Barbara J. Finer, Esq.
5454 Wisconsin Ave.
Suite 1400
Chevy Chase, MD 20015

Richard G. Amato
1622 Corporation Counsel, D.C.
Office of the Corporation Counsel
Room 306, Dist. Bldg.
1623 C E St. N.W.
Washington, D.C. 20004